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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,138	06/20/2003	Floyd F. Markling	566.020	5944

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EXAMINER

TRAN, HANH VAN

ART UNIT PAPER NUMBER

3637

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/601,138

Applicant(s)

MARKLING ET AL.

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21, 22 and 24-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/21/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This is the First Office Action on the Merits from the examiner in charge of this application.

#### ***Election/Restrictions***

2. Applicant's election without traverse of Species I in the reply filed on 11/12/2004 is acknowledged.

3. Claim 20 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/12/2004.

#### ***Claim Objections***

4. Claims 1-10, and 26-28 are objected to because of the following informalities: (1) claim 1, lines 3 and 5, "which is distant the outer surface" should be "which is distant from the outer surface", line 5, "indigitates" should be "interdigitates"; (2) claim 26, line 7, "inner surfaces of the second portion" should be "inner surface of the second portion". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitations recited therein fail to clearly define the metes and bounds of the claimed invention; it is not clear to the examiner how it is possible that at least two channels of

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the outer surface of the second portion being closer to the first portion than the remainder of the second portion. Clarification or correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-9, 11-12, and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,401,347 to Shuert.

Shuert discloses a thermoforming plastic pallet comprising all the elements recited in the above listed claims including, such as shown in Figs 10-19, a first portion 30 having a generally flat outer surface and an inner surface including a plurality of undulating ridges and valleys disposed from the outer surface; a second portion 32 having an outer surface including a plurality of depending feet 36 and intervening channels, and an inner surface including a plurality of undulating ridges and valleys displaced from the outer surface; wherein the undulating ridges and valleys of the inner surface of the second portion are molded in complementary interdigitation to the undulating ridges and valleys of the first portion, the outer surface of the second portion includes a plurality of undulating ridges and valleys which ridges being defined as the feet and the valleys being defined as the spaced between adjacent feet.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shuert.

Shuert discloses all the elements as discussed above including the inner surface of the first portion being molded to the inner surface of the second portion, and tack off points being located along peaks and valleys of the first and second portions. The different being that Shuert does not clearly disclose the plastic pallet is formed from puncture-resistant plastics. It is well known in the art to form a plastic article from a puncture-resistant plastic material for the purpose of preventing damage to said article during transporting from one location to another. Therefore, it would have been obvious to modify Shuert by having the plastic pallet being formed from puncture-resistant plastic for the purpose of preventing damage to said pallet during transporting from one location to another.

12. Claims 13-19, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuert in view of USP 6,112,672 to Heil and US 2004/0159266 to Fisch et al.

Shuert discloses a thermoforming plastic pallet comprising all the elements recited in the above listed claims including, such as shown in Figs 10-19, a first portion 30 having a generally

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flat outer surface and an inner surface including a plurality of undulating ridges and valleys disposed from the outer surface; a second portion 32 having an outer surface including a plurality of depending feet 36 and intervening channels, and an inner surface including a plurality of undulating ridges and valleys displaced from the outer surface; wherein the undulating ridges and valleys of the inner surface of the second portion are molded in complementary interdigitation to the undulating ridges and valleys of the first portion, the outer surface of the second portion includes a plurality of undulating ridges and valleys which ridges being defined as the feet and the valleys being defined as the spaced between adjacent feet. The differences being that Shuert fails to disclose the pallet being a blow-molded pallet, instead of a thermoforming pallet, and the method steps recited in the method claims 13-14.

Heil teaches that it is well known in the art to make members of a plastic pallet by blow-molded plastic, and Fisch et al teaches the method steps of blow molding a pallet by blow molding a first portion, then inserting the first portion into a mold shaping of a second portion in order to provide a process of manufacture that is predictable and reproducible, thereby decreasing variance and operating costs. Therefore, it would have been obvious and well within the level of one skill in the art to have the plastic pallet of Shuert being made of blow-molding process in order to provide a process of manufacture that is predictable and reproducible, thereby decreasing variance and operating costs, as taught by Heil and Fisch et al, since the references teach alternate conventional plastic pallet structure, used for the same intended purpose, thereby providing structure as claimed. Furthermore, in regard to the method steps, Shuert, as modified, discloses all the elements recited therein, thus meets the claimed limitations.

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***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smyers et al, Gruber et al, Muirhead, Chuan-Jen, Shuert '544, Shuert '641, Munroe, Mead, Mori, Miyata et al, and Kusatake all show structures similar to various elements of applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (703) 308-6302. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT  
December 12, 2004

  
**Hanh V. Tran**  
**Art Unit 3637**